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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/651,879

08/29/2003

Jim Feeley

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9352

29053

7590

02/09/2005

EXAMINER

LE, HUYEN D

DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P.

2200 ROSS AVENUE

SUITE 2800

DALLAS, TX 75201-2784

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/651,879

Applicant(s)

FEELEY ET AL.

Examiner

HUYEN D. LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/20/04; 12/05/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### Objection C.F.R. 1.75

1. Claims 1 and 7 are objected to as presenting inconsistency.

In claim 1, lines 6-7 and 9, after "speaker", --module-- should be inserted.

In claim 7, lines 8, 9 and 11, after "speaker", --module-- should be inserted.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iseberg (U.S. patent 5,887,070) in view of Kelsey (U.S. patent 2,430,229).

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Regarding claims 1 and 4-5, Iseberg teaches a hearing aid that comprises a speaker module (18, 19, 20). As shown in figures 2 and 4, the speaker module has a tubular body (34, 35) and includes an arcuate raised ridge (see the outer wall 34 at the coupling device 38 or 43).

Iseberg further teaches a cushion tip (38, 39, 40, 41). The cushion tip includes a tubular portion enclosing the speaker module that applies an elastic force as claimed (col. 3, lines 47-55). As shown in figure 2, the tubular portion of the cushion tip is longer than the speaker module as claimed.

Iseberg does not specifically teach that the cushion tip (38) is made of elastic material, polymer material or silicone material. However, it is known in the art to provide an eartip or earpiece to be made of elastic material such as rubber.

Kelsey teaches an eartip (10) is formed of a polymer or silicone material (col. 3, lines 2-3).

Since Iseberg does teach an eartip of a soft compliant material (col. 3, lines 40-41 and lines 50-51); it therefore would have been obvious to one skilled in the art to provide the eartip (38) of Iseberg to be made of any soft compliant material such as a polymer or silicone material, as taught by Kelsey, for better locking the cushion tip to the speaker housing, better sealing and providing a comfort to the wearer (also see col. 3, lines 40-49).

Regarding claim 2, Iseberg teaches an insulated wiring portion (13, 15, 16, 17, figure 1) that is attached to the speaker module as claimed.

Regarding claim 3, Iseberg does not specifically show a plurality of prongs as claimed. However, Iseberg does show an end cap (29) and/or a plug (17) at the insulating wiring portion

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for a detachable mechanical and electrical connection to an audio processing module (col. 3, lines 9-13).

Since providing a plurality of prongs for the electrical connections or for the plugs is known in the art; it therefore would have been obvious to one skilled in the art to provide the prongs for the electrical connections at the end cap (29) or for the plug (17) of Iseberg for providing a better electrical connections.

4. Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiter et al. (U.S. patent 5,606,621) in view of Iseberg (U.S. patent 5,887,070) and further in view of Kelsey (U.S. patent 2,430,229).

Regarding claims 6-7 and 10-12, Reiter teaches a hearing aid that comprises a behind-the-ear module (10), a speaker module (18, 20) in the bony portion as claimed. Reiter does not specifically show a cushion tip for enclosing the speaker module as claimed. However, providing a cushion tip for attaching at the end of a speaker module is known in the art.

Iseberg teaches a hearing aid that comprises a speaker module (18, 19, 20). As shown in figures 2 and 4, the speaker module has a tubular body (34, 35) and includes an arcuate raised ridge (see the outer wall 34 at the coupling device 38 or 43).

Iseberg further teaches a cushion tip (38, 39, 40, 41). The cushion tip includes a tubular portion enclosing the speaker module that applies an elastic force as claimed (col. 3, lines 47-55). As shown in figure 2, the tubular portion of the cushion tip is longer than the speaker module as claimed.

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Since Iseberg a speaker module to be inserted into the ear canal; it therefore would have been obvious to one skilled in the art to provide a speaker module and a cushion tip (38), as shown by Iseberg, for the CIC component of Reiter for providing a better sealing to the ear canal.

Further, Iseberg does not specifically teach that the cushion tip (38) is made of elastic material, polymer material or silicone material. However, it is known in the art to provide an eartip or eartipiece to be made of elastic material such as rubber.

Kelsey teaches an eartip (10) is formed of a polymer or silicone material (col. 3, lines 2-3).

Since Iseberg does teach an eartip of a soft compliant material (col. 3, lines 40-41 and lines 50-51); it therefore would have been obvious to one skilled in the art to provide the eartip (38) of Iseberg to be made of any soft compliant material such as a polymer or silicone material, as taught by Kelsey, for better locking the cushion tip to the speaker housing, better sealing and providing a comfort to the wearer (also see col. 3, lines 40-49).

Regarding claim 8, Reiter in view of Iseberg and Kelsey teaches an insulated wiring portion (22) that is attached to the speaker module as claimed.

Regarding claim 9, as broadly claimed, Reiter teaches the prongs from the insulated wiring portion (22, 130, figure 2D) as claimed (col. 2, lines 38-52).

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***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (703) 305-4844. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
February 4, 2005

  
HUYEN LE  
PRIMARY EXAMINER